IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4760 OF 2004

Bhausaheb K. Pathak ...Petitioner

Vs.

Union of India & Ors. ...Respondents

Mr. R.P. Saxena for Petitioners

Mr. Y.S.Bhate i/b. Mr. S.S.Sarkar for Respondents

CORAM: H.L.GOKHALE &
S.P.KUKDAY,JJ.
DATED: 9TH JUNE, 2005

P.C.

1. Heard Mr. Saxena in support of this Petition. Mr. Bhate appears for the Respondents. The Petitioner was working as Hawaldar/Clerk in the Armed Forces. The present Petition filed on 1st July, 2003 seeks to challenge the order dated 24th October 2001 passed by the Respondents rejecting his representation with respect to denial of promotion for him to the rank of Nayab Subedar but given to his juniors from 1st April, 2000. Mr. Saxena learned Counsel for the Petitioner submits that the Petitioner has been denied the promotion on the basis of the down grading of his assessment as held by the Reviewing Officer though evaluation of his service by the Original Authority was much latter. His submission is that he was not communicated this down gradation, which was made way back in the year 1997. He relies upon the Division Bench Judgment of **Delhi High Court** in the case of **Havildar Sedu Ram Vs. The Chief of Army Staff, 2000(2) Administrative Total Judgments, page 478** where

the circumstances were similar and the High Court had interfered. He also relies upon the Judgment of Division Bench of this Court in the case of **Dr. Binoy Gupta Vs. The Union of India and Ors. reported in 2002(3) Administrative Total Judgments page 7,** wherein on account of such down grading which was not communicated, the High Court directed Respondents to convene a review DPC and reconsider the case of the Petitioner ignoring the ACRs of the Reviewing Officer and if he is found suitable, give him promotion from the date from which other officers were promoted on the recommendations of the DPC.

2. The Respondents have filed a reply contending that it is an Administrative Decision arrived at on the basis of assessment of annual confidential report. That apart the Petitioner was declined promotion on 1st April, 2000. The representation was rejected on 21st January, 2001 and although this Petition is filed on 1st July, 2003, it was not moved until the Petitioner peacefully retired from Armed Forces on 29th February, 2004. It was moved for the first time on 20th July, 2004. The Respondents submit that the Petition should not be entertained only on the ground of delay.

3. We accept submissions made by Respondents. The Petitioner moved this Petition after his retirement peacefully from Armed Forces, nearly three years after the impugned order was communicated to him and there is no explanation to the same. Entertaining the Petition at this stage will mean expunging the

downgrading, reconvening the DPC, notionally promoting the Petitioner and giving him all monitory benefits after his retirement. It cannot be done at this late stage. The Petition suffers from delay and laches. Petition is rejected.

(H.L.GOKHALE,J.)

(S.P.KUKDAY,J.)